

January 23, 2023

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 23-05

The purpose of this letter is to inform county child welfare services agencies of the requirements of [Assembly Bill 2866 \(Chapter 165, Statutes of 2022\)](#) that increased the standard of evidence at the six-month, 12-month and any subsequent permanency review hearings to “clear and convincing” evidence when determining that reasonable services were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and continued custody of the child have been offered and/or provided.



KIM JOHNSON
DIRECTOR

CALIFORNIA HEALTH & HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



GAVIN NEWSOM
GOVERNOR

January 23, 2023

ALL COUNTY LETTER NO. 23-05

TO: ALL COUNTY WELFARE DIRECTORS
ALL FEDERALLY RECOGNIZED TRIBES
ALL FOSTER CARE MANAGERS
ALL FOSTER FAMILY AGENCIES
ALL TRANSITIONAL HOUSING COORDINATORS
ALL COURT APPOINTED SPECIAL ADVOCATE PROGRAMS

SUBJECT: **NEW LEGAL STANDARD OF CLEAR AND CONVINCING EVIDENCE FOR REASONABLE SERVICES FINDINGS AT ALL JUVENILE DEPENDENCY REVIEW HEARINGS DURING REUNIFICATION**

REFERENCE: [ASSEMBLY BILL 2866 \(CHAPTER 165, STATUTES OF 2022\); WELFARE AND INSTITUTIONS CODE \(WIC\) 224.1, WIC 306.6, WIC 366.21, AND WIC 366.22; ALL COUNTY LETTER 20-38](#)

PURPOSE

The purpose of this All County Letter (ACL) is to inform county child welfare services (CWS) agencies of the changes made by [Assembly Bill \(AB\) 2866 \(Chapter 165, Statutes of 2022\)](#). The AB 2866 added “clear and convincing evidence” as the standard of proof by which a juvenile court judge must find that reasonable services were provided or offered to a parent or legal guardian at the juvenile dependency review hearings held pursuant to [Welfare and Institutions Code \(WIC\) 366.21\(e\)](#), [WIC 366.21\(f\)](#), and [WIC 366.22\(a\)](#) during reunification.

ASSEMBLY BILL 2866 REQUIREMENTS

The [AB 2866](#) identifies the standard of proof by which a juvenile court judge is required to decide whether reasonable services were offered or provided to the parents, or legal guardians at the six-, 12-, and 18-month review hearings. A finding that reasonable services designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and continued custody of the child were provided or offered to

the parent or legal guardian must be made by clear and convincing evidence. The requirements of [AB 2866](#) do not change the active efforts requirement for Indian children pursuant to [WIC 224.1](#).

BACKGROUND

Under juvenile dependency law, when a child is removed from the custody of their parent or legal guardian and reunification services are ordered, the CWS agency must provide reasonable services designed to aid the parent or legal guardian in overcoming the problems that led to removal. At each subsequent review hearing, the juvenile court must make a finding on whether reasonable services had been provided. Prior to [AB 2866](#), however, WIC did not specify the burden of proof the CWS agency had to meet in showing it had provided reasonable services. Juvenile courts relied upon case law interpreting WIC as setting a clear and convincing evidence standard at the six- and 12-month review hearings and a lower preponderance of the evidence standard at the 18-month review hearing.

The [AB 2866](#) amended [WIC 366.21](#) and [WIC 366.22](#) to specifically apply the clear and convincing evidence standard to the reasonable services finding for every review hearing until reunification efforts are terminated. The [AB 2866](#) enacted into statute the case law on six- and 12-month review hearings and overruled the case law on 18-month hearings by adopting the clear and convincing evidence standard in both statutes. Consequently, the juvenile court must determine whether the CWS agency has met the heightened burden of proving it had provided reasonable services not only at the six- and 12-month review hearing but at the 18-month hearing as well.

THE PRACTICAL IMPACT OF AB 2866

The practical impact of [AB 2866](#) is the need for as much information and documentation of services in the 18-month review report as there already should be in the six- and 12-month review reports. The heightened standard of proof for reasonable services findings does not mean that more services must be provided for services to be considered reasonable, but rather that more detailed information or stronger evidence may be needed to prove that reasonable services have been provided. While preponderance of the evidence means “more likely than not,” clear and convincing evidence is a heightened standard of proof. It requires a finding of high probability, or evidence so clear as to leave no substantial doubt and the unhesitating agreement of every reasonable mind. As described above, the clear and convincing evidence standard has already been applied to the reasonable services finding at the six- and 12-month review hearings. What is new is that the clear and convincing evidence standard now applies to the reasonable services finding at the 18-month review hearing as well. Thus, the practical impact of [AB 2866](#) is the need for as much information and documentation of services in the 18-month review report as there already should be in the six- and 12-month review reports.

Most experienced caseworkers will be familiar with meeting the clear and convincing evidence standard for the six- and 12-month review hearings and need only be advised to apply the same efforts to their court reports for the 18-month review hearings. County CWS agencies may need to reiterate to staff how to document efforts to provide services in all pertinent court reports to meet the standard of clear and convincing evidence. The caseworker must provide detailed information in the child's case plan *Services Delivery Log* and/or the Child Welfare Services contact notes to demonstrate to the judge the services that have been provided to the family. In addition, the caseworker should attach these logs and/or notes to the court report to provide clear and convincing evidence to the juvenile court.

Requiring clear and convincing evidence for reasonable service findings may impact case litigation and has the potential to affect the timelines for reunification and permanency. Caseworkers should discuss with their county counsel the impact on a case if the juvenile court cannot find the county has met its burden of proving it has provided reasonable services by clear and convincing evidence at review hearings.

RECOMMENDATIONS IN ALIGNMENT WITH INTEGRATED CORE PRACTICE MODEL

It is critical that caseworkers utilize practice components from the [Integrated Core Practice Model](#) (ICPM) when recommending, documenting, and implementing services in the child's case plan. When caseworkers utilize the ICPM practice components of engagement, assessment, teaming, service planning and delivery, monitoring and adapting, and transitioning, the families will have more positive outcomes. The caseworker should partner with families via the Child and Family Team (CFT) meeting and/or with the Child and Adolescent Needs and Strengths Assessment Tool to identify and use services that would specifically address and resolve the issue(s) that brought the family into the child welfare system. The caseworker should provide a rigorous and balanced assessment of the situation addressing the child's safety as well as parent's or legal guardian's responsibility and accountability when identifying required services for the family. The caseworker is encouraged to actively support parents or legal guardians by planning services to aid the parent or legal guardian in overcoming the problems that led to the initial removal of the child. This may include checking in with the parent or legal guardian to ensure that they are participating in the required program or contacting the service provider to discuss the progress of treatment. The caseworker should frequently engage with the parent or legal guardian to ensure that the court ordered services are beneficial and explore other options if the services are unsuccessful. The caseworker should support and advocate for the parent or legal guardian by: 1) providing support needed to complete the program (e.g., transportation vouchers, working around work schedules, etc.), 2) following up with the parent or legal guardian to ensure that they are willing and able to participate in the required program, and 3) determining what support is needed. The caseworker should make every effort to ensure that the parent or legal guardian is participating in the program by verifying their attendance in all court ordered services. The caseworker may need to be more intentional when addressing a parent's or legal guardian's lack of engagement in the

required program by listening to the parent or legal guardian in order to resolve concerns and identify needed supports to complete the required program. When parents refuse or do not attend their recommended or court ordered case plan activities the CWS agency may request the parents to sign an affidavit that they have received referrals, have read, and understood the caseworker's recommendations for services, and have read and understood the court orders, to provide an increased amount of evidence to the juvenile court. If the parent or legal guardian refuses to sign the affidavit the caseworker can notify and document the outcome and provide the requested unsigned affidavits to the juvenile court.

Further documentation is required when the child is an Indian child to show that active efforts have been made and offered. The [WIC 224.1\(f\)](#) describes active efforts as, but not limited to, a list of affirmative, active, timely and thorough services. In the case of an Indian child, active efforts require the caseworker to:

- Identify, notify, and invite representatives of the Indian child's Tribe and extended family to participate in providing support and services to the Indian child's family and in CFT meetings, permanency planning, and resolution of placement issues.
- Offer and employ available and culturally appropriate family preservation strategies and facilitate the use of remedial and rehabilitative services provided by the child's Tribe.
- Identify community resources, including housing, financial assistance, transportation, mental health and substance abuse services, and peer support services, and actively assist the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources.
- Monitor the progress and participation in services; and
- Provide post-reunification services and monitoring. For more information regarding active efforts please see [ACL 20-38](#).

When the child is Native American but does not meet the definition of "Indian child" within the meaning of the Indian Child Welfare Act (ICWA), either because the child's Tribe is not federally recognized or because the child is not eligible for membership in their parent's Tribe, be it federally recognized or not, best practice calls for the caseworker to apply the principles of ICWA when working with the family. In fact, in certain circumstances, the juvenile court has discretion to allow non-federally recognized Tribes to participate in juvenile dependency proceedings in essentially the same manner as a federally recognized Tribe can participate in an ICWA case in accordance with [WIC 306.6](#). Following the "spirit of ICWA" rather than the strict letter of the law helps promote resiliency for Native American children and improves outcomes for Native American families, who often share similar experiences and consequences of historic and intergenerational trauma. With regard to services, the spirit of ICWA may call for active efforts in order to overcome historical and intergenerational trauma and mistrust of government systems and overcome barriers to engagement by the parents or legal guardian. Such active efforts include consulting with the Native American child's Tribe and inviting their collaboration. These children and families may still be eligible to access tribal programs or services, and their Tribes may be able to provide helpful information on placement options, etc. See the [Tribal-Follow the Spirit ICWA](#)

[document](#) more information on how to incorporate the spirit of ICWA into your social work practice.

Ultimately, the caseworker is required to engage and support the parent, Indian custodian, or legal guardian when offering and providing services to reach the case plan permanency goal. If you have any questions or need additional guidance regarding the information in this letter, contact the Family Reunification and Pathways to Permanency Unit at Reunification-Permanency@dss.ca.gov.

Sincerely,

Original Document Signed By

ANGIE SCHWARTZ
Deputy Director
Children and Family Services Division